UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION

ANTI-PINCH SOLUTIONS, LLC, Plaintiff, v. **BMW OF NORTH AMERICA, LLC,** Defendant.	Case No. 2:10-cv-03352-WHW-CCC Hon. William H. Walls Claire C. Cecchi

JOINT DISCOVERY PLAN

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Civil Rule 26.1, the Local Patent Rules of the District of New Jersey, and the Court's October 5, 2010 Letter Order (Doc. 18), Plaintiff Anti-Pinch Solutions, LLC ("APS") and Defendant BMW North America, LLC ("BMWNA") hereby jointly submit this Joint Discovery Plan. The parties conferred on December 17, 2010 pursuant to Fed. R. Civ. P. 26(f).

1. Set forth a factual description of the case. Include the causes of action and affirmative defenses asserted.

This is a patent infringement action brought by APS against BMWNA for infringement of U.S. Patent No. 5,399,950 ("the '950 patent"). APS is the exclusive licensee of the '950 patent.

The '950 patent is titled "Automatic Venting System for a Vehicle with Obstruction Detection Utilizing Dynamically Modified Threshholds". APS asserts that BMWNA's anti-trapping system in its E60 or BMW 5 Series automobiles infringes one or more claims of the '950 patent. BMWNA denies that it infringes the patent in suit and asserts that the patent in suit is invalid.

BMWNA asserts counterclaims seeking a declaration of non-infringement and invalidity as to the `950 Patent.

2. Have settlement discussions taken place? If so, when?

The parties have not yet engaged in settlement discussions, but intend to begin preliminary discussions in the near future.

3. The parties have not exchanged the information required by Fed. R. Civ. P. 26(a)(1). If not, state the reason therefor.

APS served its disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on October 22, 2010. BMWNA will serve its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) by January 25, 2011.

4. Describe any discovery conducted other than the above disclosures.

The parties have not yet engaged in any discovery other than APS serving its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1). The parties will shortly serve interrogatories and document requests consistent with the Court's Initial Scheduling Order.

5. Generally, dispositive Motions cannot be filed until the completion of discovery. Describe any Motions any party may seek to make prior to the completion of discovery. Include any jurisdictional Motions and Motions to Amend.

At this time, the plaintiff does not anticipate any jurisdictional motions or motions to amend prior to the completion of discovery.

BMWNA believes that it has a strong non-infringement defense that is susceptible to summary judgment. The relevant facts are not likely to be in dispute. The technology is relatively simple, involving a sensor on an electric motor. Therefore, BMWNA requests that the

Court allow it to seek leave to move for summary judgment of non-infringement following some initial discovery.

6. The parties proposed the following:

(a) Discovery is needed on the following subjects:

The parties agree that issues that will require discovery in this action include the following:

- Whether BMWNA has infringed, directly or indirectly, any claim of the ‘950 patent;
- The damages to which APS is entitled if BMWNA is found to infringe;
- Plaintiff's standing to sue on the `950 Patent
- Whether the ‘950 patent is valid;
- Whether the ‘950 patent is enforceable;
- Whether this case is exceptional and entitles either party to an award of attorneys’ fees; and
- Other issues that may arise during discovery.

(b) Should discovery be conducted in phases? If so, explain.

The parties agree that discovery should not be conducted in phases.

In addition to the discovery schedule and terms set forth below, the parties agree to make a good-faith effort to provide a privilege log within twenty-one (21) calendar days of service of documents responsive to document requests. The parties further agree that communications between any party and its litigation counsel related to this action, documents and things created by or for a party’s litigation counsel in anticipation of this action, and documents and things created after the date of the filing of this lawsuit need not be identified on any such privilege log.

(c) Number of Interrogatories by each party to each other party: 25

(d) Number of Depositions to be taken by each party: 10 without leave of Court as provided in Fed.R.Civ.P 30.

(e) Opening expert report due: 30 days after a Claim Construction Order is issued.

(f) Responsive expert report due: 60 days after a Claim Construction Order is issued.

The parties agree that drafts of expert reports, declarations, notes by experts, and communication between counsel and experts for the purposes of preparing an expert's report or declaration of testimony, which were or are to be submitted in this action, need not be produced or identified in a privilege log. However, any document or communication upon which an expert relied informing their opinion in this action cannot be withheld from production or disclosure and shall be identified and provided in accordance with Fed. R. Civ. P. 26.

(g) Motions to Amend or to Add Parties to be filed by: March 18, 2011.

(h) Last Date on which Dispositive motions may be served within 120 days after a Claim Construction Order is issued

(i) Factual discovery to be completed by November 14, 2011.

(j) Expert discovery to be completed by August 31, 2011 for expert discovery on claim construction issues. As to all other issues, expert discovery shall be completed 45 days after the filing of the last expert report provided in Section 6(f).

(k) Set forth any special discovery mechanism or procedure requested, including data preservation orders or protective orders:

The parties agree that electronically stored information is subject to discovery. However, the parties further agree that archival records, back up tapes, and information not located on BMWNA servers need not be searched in the initial document production. The parties shall exchange electronically stored information in the following format if practical:

Documents will be produced as single-page black-and-white Group IV TIFF images; if color images are required, these will be in 16-bit JPEG format. The producing party will also produce an industry standard batch load file such as a DII or LPF file. The preferred control numbering schema will be comprised of an alphabetical prefix with no less than eight following (8) numbers, starting with 00000001. There will be no spaces in the identifying control number. Documents will be produced with document-level ASCII text files (.txt) of either extracted text (for native files) or OCR text (for paper documents). All text files will be named after the identifying control number of the first page of the document; all image files will be named after the identifying control number of the corresponding page of the document.

All electronic documents, with the exception of Excel spreadsheets, will be converted to image format. Excel spreadsheets, as well as any other documents that cannot be readily converted to image format through industry-standard electronic discovery processes, will be produced as native files.

Because confidential information will have to be exchanged in this action, the parties agree that a discovery confidentiality order will be necessary and will attempt to agree on the form of such order for submission to the Court.

(l) A pretrial conference may take place on: *To be determined by the Court*. The parties agree that this case will be ready for a pretrial conference after the week of March 19, 2012.

(m) Trial by jury or non-jury Trial? The parties have requested a jury trial.

(n) Trial date: The parties anticipate this case being ready for trial after May 1, 2012**.**

7. Do you anticipate any discovery problem(s)? No. However, BMWNA notes that the vehicles plaintiff accuses of infringement are made by another company, BMW AG, in Germany. It is possible that discovery in Germany could be needed, depending on what discovery plaintiff seeks.

8. Do you anticipate any special discovery needs (i.e., videotape/telephone depositions, problems with out-of state witnesses or documents, etc.)? As noted above, discovery in Germany could be needed. Also, it appears that the named inventors are not located in NJ and out-of-state discovery of the inventor may be necessary. BMWNA would anticipate videotaping any depositions it takes in the case.

9. State whether this case is appropriate for voluntary arbitration (pursuant to L. Civ. R. 201.1 or otherwise), mediation (pursuant to L. Civ. R. 301.1 or otherwise), appointment of a special master or other special procedure. If not, explain why and state whether any such procedure may be appropriate at a later time (i.e., after exchange of pretrial disclosures, after completion of depositions, after disposition of dispositive motions, etc.).

The parties agree this case may be appropriate for mediation after some discovery has been taken. The parties will propose dates to complete both pre and post *Markman* mediation once the Court sets a date for the *Markman* hearing.

10. Is this case appropriate for bifurcation?

The parties do not believe this case is appropriate for bifurcation.

11. APS consents to the trial being conducted by a Magistrate Judge. BMWNA does not consent to the trial being conducted by a Magistrate Judge.

In addition to the information provided above, the parties agree on the following proposed case schedule:

Date	Event
1/11/2011	Rule 16 Conference
1/31/2011	Deadline for parties to submit a proposed discovery confidentiality order

Date	**Event**
1/25/2011	Deadline for Defendant to serve initial disclosures pursuant to Fed. R. Civ. P. 26(a)
2/11/2011	Deadline for Plaintiff to comply with L.P. R. 3.1 and 3.2 (Infringement Contentions)
2/11/2011	Deadline for parties to present certifications required by L. Civ. R. 5.3(b)(2)
3/11/2011	Deadline for Defendant to comply with L.P.R. 3.3 and 3.4 (Invalidity and Non-Infringement Contentions)
3/18/2011	Deadline to file motions to join additional parties or to file amended pleadings
3/25/2011	Deadline to comply with L.P.R. 4.1 (Parties to exchange list of claim terms)
4/15/2011	Deadline to comply with L.P.R. 4.2 (Parties to exchange proposed constructions)
5/16/2011	Deadline to comply with L.P.R. 4.3 (Parties to file a Joint Claim Construction and Prehearing Statement)
6/15/2011	Completion of Claim Construction Discovery
8/1/2011	Deadline to comply with L.P.R. 4.5(a) (Parties to file opening *Markman* Briefs)
8/31/2011	Deadline to comply with L.P.R. 4.5(b) (Close of Expert Discovery on Claim Construction Issues)
9/30/2011	Deadline to comply with L.P.R. 4.5(c) (Parties to file responsive *Markman* briefs)
10/14/2011	Deadline for parties to confer pursuant to L.P.R. 4.6
To Be Determined By the Court	*Markman* Hearing
11/14/2011	Close of Fact Discovery
30 days after *Claim Construction Order*	Deadline for parties to serve opening expert reports
30 days after *Claim Construction Order*	Deadline for parties to comply with L.P.R. 3.8 (advice of counsel)
60 days after *Claim Construction Order*	Deadline for parties to serve responsive expert witnesses
120 days after *Claim Construction Order*	Deadline to file dispositive motions, with the right to file any time prior

Date	**Event**
150 days after *Claim Construction Order*	Deadline to file oppositions to dispositive motions
165 days after *Claim Construction Order*	Deadline to file replies to dispositive motions
30 days after *Dispositive Motions Order*	Deadline for parties to exchange proposed trial exhibits
45 days after *Dispositive Motions Order*	Deadline for counsel to confer and prepare a Joint Final Pretrial Order
55 days after *Dispositive Motions Order*	Deadline for parties to file a Joint Final Pretrial Order
To Be Determined by the Court	Final Pretrial Conference
To Be Determined by the Court – After May 2, 2012	Trial Anticipated Length of Trial: 5 Days

Dated: January 7, 2011

s/ Jean-Marc Zimmerman (w/consent)
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Respectfully submitted,

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ATTORNEYS FOR DEFENDANT BMW OF NORTH AMERICA, LLC

CERTIFICATE OF SERVICE

Christopher Dalton, of full age, hereby certifies as follows:

1. I am counsel in the firm of Buchanan Ingersoll & Rooney, PC, counsel for Defendant BMW of North America, Inc. in the above-captioned matter.

2. On this date, I caused a true and correct copy of the parties Joint Discovery Plan to be filed electronically utilizing the CM/ECF system.

3. A copy of the foregoing document was also served by U.S. mail, postage prepaid, on this date upon the following:

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I declare under penalty of perjury that the foregoing is true and correct.

/s/ Christopher Dalton
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Dated: January 7, 2011